

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

CANDIDA STOKES,)
)
Plaintiff,)
)
v.) CASE NO. 2:07CV686
)
THE CITY OF MONTGOMERY,)
et al.,)
)
Defendants.)
)

DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Defendants, City of Montgomery; Bobby Bright, Mayor; Arthur Baylor, Chief of Police, pursuant to Rule 56 of the *Federal Rules of Civil Procedure*, by and through the undersigned attorney, move the Court for summary judgment as the facts and law of this case show that there is no genuine issue as to any material fact and that as moving party it is entitled to judgment as a matter of law. In support of the Motion for Summary Judgment, Defendants rely on the Pleadings and Plaintiff's Answers and Responses to Discovery and Defendants' Memorandum of Law in Support of Summary Judgment with the following evidentiary submissions attached thereto:

DX 1, EEOC Charge for Plaintiff

DX 2, Right to sue letter

DX 3, Letter from Montgomery Psychiatry Associates

DX 4, Letter from American Behavioral

DX 5, Letter from Park Place Psychiatry

DX 6, Request for admissions Plaintiff

DX7, Deposition of Kevin Murphy

DX 8, Deposition of Art Baylor

DX 9, Deposition of Bobby Bright

DX 10, Deposition of John Carnell.

Plaintiff filed a Three count complaint listing three causes of action violation and retaliation of ADA, Violation and retaliation under Title VII and violation and retaliation under FMLA.

Plaintiff in this case was police officer with the Montgomery Police Department in December of 2005, when she attempted to take her own life by ingesting over the counter sleeping pills. While recovering the Plaintiff was placed on FMLA leave. After returning to work Plaintiff was placed in a light duty position on the back desk of Police headquarters and an investigation into her conduct was ordered by the Division head of the Montgomery Police Department. After the investigation was concluded, the Division Commander, Kevin Murphy, recommended that Plaintiff be terminated for violating two rules of the Montgomery Police Department Handbook. Duty to remain fit and Duties of responsible employment. These charges were forwarded to the Chief of Police who then convened a trial board to hear both sides, the trial board sustained the charge of Duties of responsible employment but did not sustain the Duty to remain fit. The recommendation of the trial board was sent to the Chief who then conducted a hearing of his own. Evidence was again presented and the Chief ruled to uphold the trial board as to the Duties of responsible employment and overturn the trial board and reinstate the Duty to remain fit charge. Both of these charges were forwarded to the Mayor's office where a

hearing was conducted by the Executive Assistant to the Mayor Michael Briddell. At the conclusion of the hearing the Mayor terminated the Plaintiff based on the charges brought by the Montgomery Police Department and the possible exposure to liability should the Plaintiff be allowed to remain employed with the City of Montgomery.

Conclusory allegations cannot interpose genuine issues of material fact into the litigation so as to preclude entry of summary judgment. Fed.Rules Civ.Proc.Rule 56(c). Defendants' Motion for Summary Judgment is due to be granted.

Submitted this the 12th day of August, 2008.

/s/ Michael D. Boyle
MICHAEL D. BOYLE(BOY032)
Attorney for Defendants

City of Montgomery
Legal Division
P. O. Box 1111
Montgomery, AL 36101-1111
Phone: (334) 241-2050
FAX: (334) 241-2310

CERTIFICATE OF SERVICE

I hereby certify that foregoing *Memorandum of Law in Support of Defendants' Motion for Summary Judgment* has been served upon the following by electronic filing/notification of the United States District Court Middle District of Alabama on the 12th day of August, 2008, properly addressed to all as follows:

Deborah Mattison

/s/ Michael D. Boyle
Of Counsel

U. S. Equal Employment Opportunity Commission

Ms Kim Fehl
City Attorney
CITY OF MONTGOMERY
P.O. Box 1111
Montgomery, AL 36101



PERSON FILING CHARGE

Candida Stokes

THIS PERSON (check one or both)

 Claims To Be Aggrieved Is Filing on Behalf of Other(s)

EEOC CHARGE NO.

420-2006-03813

NOTICE OF CHARGE OF DISCRIMINATION

(See the enclosed for additional information)

This is notice that a charge of employment discrimination has been filed against your organization under:

Title VII of the Civil Rights Act
 The Age Discrimination in Employment Act

The Americans with Disabilities Act
 The Equal Pay Act

The boxes checked below apply to our handling of this charge:

1. No action is required by you at this time.
2. Please call the EEOC Representative listed below concerning the further handling of this charge.
3. Please provide by **21-AUG-06** a statement of your position on the issues covered by this charge, with copies of any supporting documentation to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
4. Please respond fully by _____ to the enclosed request for information and send your response to the EEOC Representative listed below. Your response will be placed in the file and considered as we investigate the charge. A prompt response to this request will make it easier to conclude our investigation.
5. EEOC has a Mediation program that gives parties an opportunity to resolve the issues of a charge without extensive investigation or expenditure of resources. If you would like to participate, please say so on the enclosed form and respond by **02-AUG-06** to **Debra B. Leo, ADR Coordinator, at (205) 212-2033**. If you DO NOT wish to try Mediation, you must respond to any request(s) made above by the date(s) specified there.

For further inquiry on this matter, please use the charge number shown above. Your position statement, your response to our request for information, or any inquiry you may have should be directed to:

Murry A. Gosa,
Intake Supervisor

EEOC Representative

Telephone: (205) 212-2119

Birmingham District Office - 420
Ridge Park Place
1130 22nd Street, South
Birmingham, AL 35205

Enclosure(s): Copy of Charge

CIRCUMSTANCES OF ALLEGED DISCRIMINATION

RACE COLOR SEX RELIGION NATIONAL ORIGIN AGE DISABILITY RETALIATION OTHER

See enclosed copy of charge of discrimination.

DEFENDANT'S
EXHIBIT

Date
July 19,
2006

Name / Title of Authorized Official
Bernice Williams-Kimbrough
District Director

Signature

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974; see Privacy Act Statement on reverse before completing this form

ENTER CHARGE NUMBER

[X] EEOC

426-2006-03813

and EEOC

(State or local Agency, if any)

NAME (Indicate Mr., Ms., or Mrs.) Ms. Candida Stokes		HOME TELEPHONE NO. (Include Area Code) (334) 897-0304
STREET ADDRESS 2215 Taylor Mill Road	CITY, STATE AND ZIP Elba, Alabama 36323	COUNTY Coffee

NAMED IS THE EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY, APPRENTICESHIP COMMITTEE, STATE OR LOCAL GOVERNMENT AGENCY WHO DISCRIMINATED AGAINST ME (If more than one list below.)

NAME City of Montgomery	NO. OF EMPLOYEES/MEMBERS Over 15	TELEPHONE NO. (Include Area Code) (334) 241-2532
----------------------------	-------------------------------------	---

STREET ADDRESS 320 North Ripley	CITY, STATE AND ZIP Montgomery, Alabama 36104	COUNTY Montgomery
------------------------------------	--	----------------------

CAUSE OF DISCRIMINATION BASED ON (Check appropriate box(es)): [] Race [] Color [x] Sex [] Religion [] Age [x] Disability [] National Origin [x] Retaliation [] Other	DATE MOST RECENT OR CONTINUING DISCRIMINATION TOOK PLACE (Month, day, year) May 9, 2006
--	---

THE PARTICULARS ARE (If additional space is needed, attach extra sheet(s)):

Date of Birth: 1/3/72 Sex: Female

- I am a female and I was hired by the City of Montgomery as a police officer on February 15, 2002.
- As a police officer, during my training I was assigned to third shift patrol. When I completed my training and became a senior Officer, I was assigned to my own route. I was promoted to Corporal in February 2005. I have been qualified for the Corporal position since my promotion in February 2005, and remain qualified for this position today.
- In December 2005, I attempted suicide. I am a person with a disability as defined by the Americans with Disabilities Act. I have been diagnosed with major depression and sleep deprivation which resulted in part from my depression. *Inter alia*, I am limited in the major life activities of concentrating, sleeping, and communicating with others. I have a history of disability, and was perceived by the Respondent as disabled. I am qualified to perform the essential functions of my job and other positions, with or without reasonable accommodations.
- Respondent meets the definition of an "employer" as defined by the Americans with Disabilities Act.

Continued on next page

[X] I also want this charge filed with the EEOC. I will advise the agencies if I change my address or telephone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.	NOTARY - (When necessary to meet State and Local Requirements) I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.
I declare under penalty of perjury that the foregoing is true and correct. 07-11-06 Date	SIGNATURE OF COMPLAINANT SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (Day, month, and year)
Charging Party (Signature)	

5. After Casing 2007-000686 WIA 2006, I requested a short leave of absence to go to a doctor for an evaluation. I was released to return to work to my former position by this doctor as well as my own personal doctors. Despite having been cleared to work by several doctors, I was placed in a desk position, rather than in my patrol position.

6. Even though I was able to perform this new position, the Respondent believed I was unfit for duty because of my prior suicide attempt and began proceedings to determine whether I was fit for duty.

7. On May 9, 2006, my employment with the Respondent was terminated. The reasons offered for my termination were (1) that I was not fit for duty and (2) that I engaged in activities which may reflect on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the police department. I was told that if the public had found out about my suicide attempt, the public would not think that I should continue to be employed as a police officer. Both my personal doctor and the one the City sent me to found that I was fit for duty. Upon information and belief, male police officers who have suffered from mental health issues have not been terminated.

9. I have been intentionally denied employment opportunities because of my disability, my record of disability, and because I am perceived as disabled.

10. I believe that my termination is because of my gender, female, and because of my disability, history of disability, and the Respondent's perception of me as an individual with a disability.

11. As the result of the above actions, including Respondent's malicious termination of my employment, I have suffered harm, have been injured, and, *inter alia*, have been denied wages, benefits, and an opportunity to pursue gainful employment. As a result, I am entitled to back-pay as well as compensatory and punitive damages, and attorneys' fees and costs. I have also suffered mental distress and hardship.

I declare under penalty of perjury that the foregoing is true and correct.

Candida L. Stohler

Signature

July 11, 2006

Date

July 11 2006

NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

To: Candida Stokes
2215 Taylor Mill
Elba, Alabama 36323

From: Equal Employment Opportunity Commission
Ridge Park Place
1130 South 22nd Street South, Suite 2000
Birmingham, Alabama 35205

[] On behalf of person(s) aggrieved whose identities
CONFIDENTIAL (29 CFR § 1601.7(c))



Charge No.
420 2006 03813

EEOC Representative
Rita W. Sterling, Investigator

Telephone No.
(205) 212-2060

(See also the additional information attached to this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964 and/or the Americans with Disabilities Act (ADA): This is your Notice of Right to Sue, issued under Title VII and/or the ADA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII or the ADA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

- [X] More than 180 days have passed since the filing of this charge.
- [] Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of the charge.
- [X] The EEOC is terminating its processing of this charge.
- [] The EEOC will continue to process this charge.

Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- [] The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- [] The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of your charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred **more than 2 years (3 years)** before you file suit may not be collectible.

If you file suit based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission

4/29/07

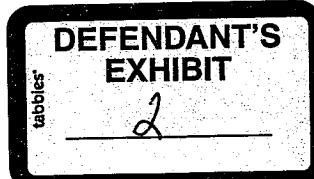
Delner Franklin-Thomas, District Director

(Date Mailed)

Enclosure(s)

cc: Audrey R. Channell
WIGGINS, CHILDS, QUINN
Attorney For CP
The Kress Building,
301 19th Street, North
Birmingham, Alabama 35203

Walter Byars
City of Montgomery
P.O. Box 1111
Montgomery, Alabama 36101



2/6

MONTGOMERY PSYCHIATRY & ASSOCIATES

William C. Freeman, M.D.
David D. Harwood, M.D.

Daryl K. Hamblin, PhD
Mollie E. Isaacson, LCSW

27 February 2006

Re: Candida Stokes

To Whom It May Concern:

This patient is currently under my medical care. At this time, I do feel that she is ready to return to duty as a police officer. If you have questions or require additional information, please feel free to contact my office at (334) 288-9009. Thank you.

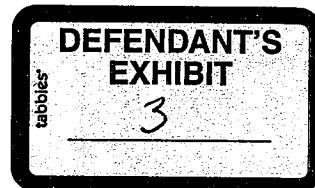
Sincerely,



David D. Harwood, M. D.

DDH/lrt

Original letter mailed to: Candida Stokes
4018 Camellia Drive
Montgomery, Alabama 36109



Et #7

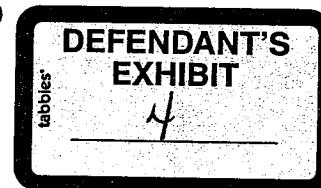


TO: Whom It May Concern
DATE: February 28, 2006
FROM: Linda Holmberg, LPC *LH*
American Behavioral
RE: Candida Stokes, 1/3/72, 420-82-6111

The purpose of this memo is to advise that my professional opinion is that Candida Stokes is fit for duty as a police officer with the Montgomery Police Department. I have had the occasion to read Dr. Schaffer's letter of recommendation and so will not go into the amount of detail he alluded to.

Candida began counseling with Cathy Boland Jones approximately 3 years on and off prior to her suicide attempt. Her daughter was counseled by Sharon Bell as well. Since her suicide attempt she has continued counseling on a weekly basis. I have experienced her as being honest with her thoughts and feelings which have been consistent with her affect. She has displayed positive behavioral changes as well as a desire to learn better coping skills. The stresses she had been under including personal relationships, the death of her mother, the Christmas season and sleep deprivation all played a part in her spiraling further into depression which culminated in her suicide attempt.

Candida is now more clear-minded and goal oriented. She denies any suicidal ideation. I do not feel she is a threat to herself or others. I trust her judgment and feel secure in her personal insight.



I would like to take this opportunity to clarify what I believe to be a miscommunication that occurred regarding Candida Stokes. I had a telephone conversation on February 3rd with John Carnell regarding my concern for Candida's reaction to the possibility that she could lose her job. I realize now that I may have miscommunicated that I believed Candida was mentally unstable on that day. That was not the case. I had seen Candida for a limited amount of time and I did not know how she might react to the possible news of the loss of her job. I am ethically responsible for my client as a Licensed Professional Counselor and felt the need to assure her safety. I apologize for any misunderstanding or inconvenience this may have caused the department.

In summation, I reiterate my opinion that I believe Candida Stokes to be fit for any and all duties as a police officer. However, I would like to suggest that you consider another shift due to the sleep deprivation it causes Candida as a single mother.

If I can be of any further service, please do not hesitate to give me a call at 396-9323.

**Park Place Psychiatry, LLC
Park Place Center
7051 Fain Park Drive, Suite 117
Montgomery, AL 36117
Ofc: (334) 215-7308 Fax: (334) 215-4427**

David D. Schaffer, D.O., Ph.D.

Judy Heinzman, R.N., C., L.P.C.

January 20, 2006

John Carnell
Risk Management
City of Montgomery

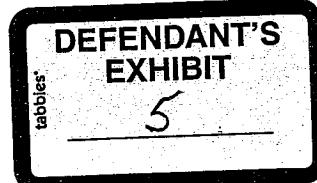
RE: Fitness for Duty Evaluation of Candida Stokes

Dear Mr. Carnell:

On December 19, 2005, Candida Stokes (DOB 01/03/72; SS# 420-82-6111) attempted suicide. John Carnell of Risk Management for the City of Montgomery requested that I perform a fitness-for-duty evaluation on Ms. Stokes.

Ms. Stokes arrived on time for her evaluation. She was well groomed, appropriately dressed, and appeared to be in good health. She was cooperative with the evaluation and forthright in her reporting of her suicide attempt. She maintained good eye contact. Her speech was of regular rate, rhythm, volume, and inflection. She was understandably worried about the fate of her job but remained calm and collected. She admitted being anxious about keeping her job but otherwise reported that her mood was stable and she was not feeling depressed. The affect I observed in her was congruent with her reported mood. It was of normal breadth and was appropriate. She was alert and fully oriented. Her thought process was logical and goal directed. She denied having thoughts of harming herself or others. I felt her judgement and insight were good.

She told me that she took 150 tablets of Tylenol-PM. As a police officer she was well aware that this was a lethal dose of Tylenol if not treated. Her attempt failed because a friend went to her house and found her in time to get her the emergency medical treatment she needed. She was taken to Baptist Hospital's emergency room and then admitted to it's intensive care unit where she spent five days. She was transferred from the intensive care unit to the inpatient unit of Baptist Hospital's Meadhaven Psychiatric facility where she spent an additional two days under the care of Dr. Harwood. He discharged her from Meadhaven's inpatient unit and admitted her to Meadhaven's Partial Hospital Program. Dr. Harwood discharged her from the partial hospital program after she had attended for ten days. Since then she has been seeing Linda Holmberg for counseling.



Based on my fitness for duty evaluation of Ms. Stokes and my prior knowledge of her as a patient, it is my professional opinion that she is fit to return to duty. I based my opinion on a review of the stresses she was under at the time of her suicide attempt and her ability to cope since then.

At the time of her suicide attempt Ms. Stokes was under extreme stress. She went through the stress of a divorce a couple of years ago. A little over six month before her overdose, on May 29, 2005, her mother passed away. Her mother's death coupled with the responsibilities of being a single mother put her under a great deal of stress. She lacks any family members to provide her with support. The only close relative she has is a sister who is not of any help. She has a thirteen year old daughter that she is raising by herself. Tremendous demands were made on her as she strove to holding down a full-time job and raising a daughter without any help.

A very important consideration at the time of her overdose was the chronic sleep deprivation she was experiencing. She reported that she had gone from third shift to first shift, then second shift, and finally back to third shift. Third shift starts at 10:00 PM and lasts until 7:00 AM. She would get off her shift and return home just in time to take her daughter to school. She would return home and attempt to get some sleep before it was time to pick her daughter up from school. She would then attempt to get some additional sleep. In general, she had a short period of time in which to get her sleep and even that time was sporadic. She spent the last part of the day before returning to work cooking dinner and caring for her daughter. At the time of her suicide attempt she was chronically sleep deprived, exhausted, and overwhelmed.

When I evaluated Ms. Stokes she had over two months to consider the factors and stressors that lead up to her overdose. I asked her why she felt she was not at risk of making another suicide attempt. She indicated that during this period of time she gained a better understanding of herself and her problems. She firmly believes she learned valuable coping skills from the therapy she received during this period. She learned through therapy ways to better manage her time. She has had time to consider the impact that her suicide would have had on her daughter. Ms. Stokes currently remains in therapy. In spite of the seriousness of her overdose, I feel she is mentally and emotionally fit to return to her duties as a police officer. I strongly believe that chronic sleep deprivation and both mental and physical exhaustion were major factors leading to her attempted suicide.

Once again, it is my professional opinion that she is fit to all duties as a police officer. Please call me if you have any further questions. We do not discuss patients without prior authorization; therefore, please be sure to identify yourself and indicate you wish to speak to me regarding Ms. Stokes.

Sincerely,

David D. Schaffer, D.O., Ph.D.

David D. Schaffer, D.O., Ph.D.
Psychiatrist and Medical Director

IN THE UNITED STATES DISTRICT COURT
FOR MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

CANDIDA STOKES,

Plaintiff,

vs.

CASE NO.: 2:07-cv-686

CITY OF MONTGOMERY;
ARTHUR BAYLOR, Chief of Police,
and BOBBY BRIGHT, Mayor, in
their individual and official capacities,

Defendants.

FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF

COME NOW the Defendants, by and through their undersigned counsel, and propound their First Request for Admissions to Plaintiff and request the Plaintiff to admit or deny the truthfulness of the facts and statements within thirty (30) days of service hereof:

1. Please either admit or deny that you were employed as a sworn law enforcement officer for the City of Montgomery from February 15, 2002, until May 9, 2006.

Admit

Candida Stokes
Candida Stokes

Deny

Candida Stokes

2. Please either admit or deny that during January 2006 you attempted to take your own life by ingesting a quantity of Tylenol PM pills.

Admit

Candida Stokes

Deny

Candida Stokes

3. Please admit or deny that subsequent to this attempted suicide you were disciplined by the City of Montgomery with violation of Police Department Rule 1.330, Duties of

DEFENDANT'S
EXHIBIT

6

Responsible Employment, specifically "engaging in any activity which may reflect negatively on the integrity, competency, or ability of the individual to perform his duty, or may reflect negatively on the reputation of the Department."

Admit

Candida Stokes

Deny

Candida Stokes

Admit I was disciplined but deny date of suicide attempt. Candida Stokes

4. Please admit or deny that during this disciplinary process you were afforded several avenues of appeals to include trial board before three superiors in the Police Department, a review by the Chief of Police which was attended by yourself as well as your attorney, and a Mayor's hearing which was attended by yourself and you were represented by an attorney and where you able present evidence in defense of your actions.

Admit

Candida Stokes

Deny

Candida Stokes

Candida Stokes

5. Please admit or deny that you waived your due process right to the Montgomery City County Personnel Board.

Admit

Candida Stokes

Deny

Candida Stokes

Admit that I did attend a personnel board hearing. Candida Stokes

6. Please admit or deny that you know that attempting suicide is a criminal act as defined by the Alabama Code in the State of Alabama.

Admit

Candida Stokes

Deny

Candida Stokes

Candida Stokes

7. Please admit or deny that you were hired by the Elba Police Department in July of 2006, less than two months after your employment with the City of Montgomery was terminated.

Admit

Candida Stokes
Candida Stokes

 Deny

Candida Stokes

8. Please admit or deny that your duties with the Elba Police Department were substantially the same as those with the Montgomery Police Department to include enforcement of laws for Federal, State, and Municipal Codes as well as investigation of traffic accidents, etc.

Admit

Candida Stokes
Candida Stokes

 Deny

Candida Stokes

9. Please admit or deny that you have been employed in a law enforcement capacity doing like-kind work since July of 2006 either with Houston County Sheriff's Department or the Elba Police Department.

 Admit

Candida Stokes

 Deny

Candida Stokes

Deny only as to Houston County, I am employed with Coffee County Sheriff's Office. Candida Stokes

10. Please admit or deny that you never asked for any accommodation with the Montgomery Police Department for any disability or perceived disability that you may have had.

 Admit

Candida Stokes

Deny

Candida Stokes

Candida Stokes

11. Please admit or deny that in February of 2006 you were sent for a fitness for duty evaluation which stated that you were fit for duty and that you had no further impairments.

Admit

Candida Stokes

Deny

I Admit fit for Duty Candida Stokes and I deny no further impairment. Candida Stokes

12. Please admit or deny that you know of no other police officer within the
Montgomery Police Department that attempted suicide and was allowed to remain a police officer
with the City of Montgomery. None

Admit

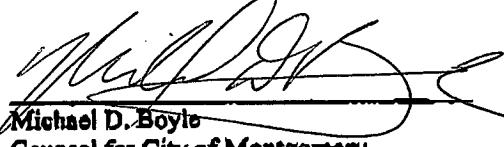
Candida Stokes

Deny

Candida Stokes

Without sufficient information to admit or deny. Candida Stokes

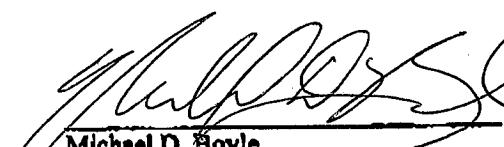
Respectfully submitted this 30th day of June, 2008.


Michael D. Boyle
Counsel for City of Montgomery
103 N. Perry St.
Montgomery, AL 36104
334-241-2050

CERTIFICATE OF SERVICE

I, Michael D. Boyle, do hereby certify that a true and correct copy of the foregoing has
been furnished by hand delivery on this 12 day of June, 2008, to:

Deborah A. Mattison, Esq.
Rachel L. McGinley, Esq.
Wiggins, Childs, Quinn & Pantazis, LLC
The Kress Building
301 19th Street North
Birmingham, Alabama 35203
(205) 314-0500


Michael D. Boyle

FREEDOM COURT REPORTING

1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4

5 CASE NUMBER: 2:07-CV-686

6 CANDIDA STOKES,

7 Plaintiff,

8 vs.

9 THE CITY OF MONTGOMERY, ET AL.,

10 Defendants.

11

12 S T I P U L A T I O N

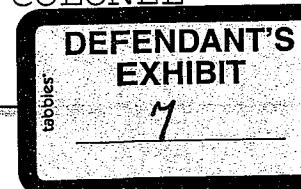
13 IT IS STIPULATED AND AGREED by and
14 between the parties through their respective
15 counsel, that the deposition of Lieutenant
16 Colonel Kevin J. Murphy may be taken before
17 Sara Mahler, CCR, at the offices of Davis &
18 Herrington, at 8650 Minnie Brown Road, Suite
19 150, Montgomery, Alabama 36117, on the 17th
20 day of June, 2008.

21

22 DEPOSITION OF LIEUTENANT COLONEL

23

KEVIN J. MURPHY



367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

FREEDOM COURT REPORTING

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1 not an expert in ADA or Family Medical
2 Leave.

3 Q. Okay. Do you understand that
4 they're -- I mean, do you have an
5 understanding of any reason why an employee
6 could not have their job back when they're
7 off of Family Medical Leave, when they come
8 off of Family Medical Leave?

9 A. I don't know. We rely on
10 Ms. Montoya over personnel and John Carnell,
11 safety director, and the attorneys to assist
12 us in those type decisions and situations.

13 Q. Now, with regard to
14 Ms. Stokes, did you talk to John Carnell at
15 all about her continued employment with the
16 city or talk with her at all?

17 A. Talk with him?

18 Q. Yes, I'm sorry. Thank you.

19 A. Yes, I did.

20 Q. Tell me the gist of your
21 conversations with Mr. Cornell. Is he your
22 only risk management person?

23 A. That I'm aware of, yes, ma'am.

FREEDOM COURT REPORTING

59

1 Q. Okay.

2 A. He, obviously being the city
3 risk manager, handled the aspect, I guess,
4 of Deputy Stokes' FMLA or ADA, whatever the
5 case may be. Mr. Carnell told me on the
6 phone, and I asked him also to appear at her
7 trial board. Mr. Carnell conveyed to me
8 that he felt keeping her as a police officer
9 was a liability and a risk.

10 Q. Okay. It sounds like you
11 agreed with him?

12 A. Yes, ma'am.

13 Q. And is that basically what --
14 is that -- in reliance on Mr. Carnell -- am
15 I pronouncing right?

16 A. Yes, ma'am.

17 Q. -- is that what led you to
18 recommend Ms. Stokes' dismissal?

19 A. No, ma'am.

20 Q. What did he tell you was a
21 liability or concern about keeping
22 Ms. Stokes? What was the concern?

23 A. Because she had attempted to

FREEDOM COURT REPORTING

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1 take her own life, she posed a risk to the
2 safety of the officers and the public.

3 Q. Okay. Was there a concern
4 that she might try it again?

5 A. Yes, ma'am.

6 Q. A concern maybe that she
7 wasn't stable enough to do her job?

8 A. Yes, ma'am.

9 Q. Were you concerned or was he
10 concerned or did he convey that he was
11 concerned that her depression really might
12 interfere with her ability to use good
13 judgment or her -- I guess mental status
14 might interfere with her ability to use good
15 judgment?

16 A. No, ma'am. He never said
17 that.

18 Q. Okay. What did he say?

19 A. What I previously stated, that
20 because she attempted to take her own life,
21 she posed the risk and a liability to the
22 city and to the officers and to the public.

23 Q. Okay. And my understanding is

FREEDOM COURT REPORTING

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1 your thought -- or his thought was that even
2 a slight risk would be too much of a risk?

3 A. Mr. Carnell never used that
4 word, slight. He just said risk.

5 Q. Some risk. Because there was
6 no way to know that she might try it again,
7 just that there was a possibility she might
8 try to commit suicide again?

9 A. I'm sorry. I don't understand
10 your question.

11 Q. My understanding is that
12 Mr. Carnell indicated that -- Of course,
13 nobody knows whether Ms. Stokes would try to
14 commit suicide, but there was the fear that
15 she might try to commit suicide again, and
16 that that made her the risk and liability?

17 A. You will have to ask
18 Mr. Carnell that question. I don't know how
19 he would answer that.

20 Q. What was your concern?

21 A. In as much as what? My
22 concern of what?

23 Q. About Ms. Stokes being a

FREEDOM COURT REPORTING

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1 liability or risk. You said you also had
2 the concern, what was your concern?

3 A. I felt that she posed a risk
4 to her fellow officers and to the public
5 because she had tried to take her own life.

6 Q. And what was the risk? I
7 guess that's what I'm trying to get at, what
8 was the risk?

9 MR. BOYLE: Object to the
10 form. Go ahead.

11 A. If she were to find herself in
12 a dangerous situation, or a life-or-death
13 encounter, that she might not act
14 appropriately.

15 Q. Like give me an example.

16 A. Faced with a deadly force
17 encounter, and she wanted to end her life,
18 she would allow herself to get shot and
19 killed.

20 Q. I see.

21 A. And if she had a partner, an
22 officer with her, they haven't made that
23 choice, and they very well may get killed

FREEDOM COURT REPORTING

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1 A. I'm not on here.

2 Q. Do you know who made the
3 decision to place, and this is January 26th,
4 27th, to place Deputy Stokes on
5 administrative leave?

6 A. No, ma'am, I don't.

7 Q. You didn't make the decision
8 to put her on administrative leave?

9 A. No, ma'am.

10 Q. When did you make the decision
11 to recommend termination? Was it right
12 after she attempted suicide?

13 A. Oh, no. When I read the
14 investigative file and drew up the papers
15 for charges and specifications, that's when
16 I made my determination.

17 Q. Okay. All right. And I'm
18 assuming that it was based on the liability
19 issues that factored into it?

20 A. The facts and evidence in the
21 file.

22 Q. Okay.

23 A. Not just the liability, but

FREEDOM COURT REPORTING

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1 the act, itself, the conduct was also a
2 factor.

3 Q. Right. But the act, itself --
4 I mean, what I'm hearing about the act
5 itself, is the act itself really raises the
6 issue of the risk and the potential
7 liability meaning she couldn't perform her
8 job?

9 A. It is a consequence of the
10 act.

11 Q. Okay. Do you remember when
12 Deputy Stokes returned to work?

13 A. Not exactly, no, ma'am.
14 When you say returned to
15 work --

16 Q. Returned to employment of some
17 sort with the city.

18 A. I don't specifically.

19 Q. Who made the decision to put
20 her on the back desk?

21 A. I spoke to the chief about it,
22 and we decided that she should be on
23 administrative duties until further notice.

FREEDOM COURT REPORTING

1

1 IN THE UNITED STATES DISTRICT COURT FOR
2 THE MIDDLE DISTRICT OF ALABAMA
3 NORTHERN DIVISION

4

5 CASE NUMBER: CV2:07-CV868-WHA

6

7 CANDIDA STOKES,
8 Plaintiff,
9 vs.

COPY

10

11 CITY OF MONTGOMERY, ARTHUR BAYLOR,
12 CHIEF OF POLICE, et al.,
13 Defendants.

14

15 S T I P U L A T I O N

16 IT IS STIPULATED AND AGREED by
17 and between the parties through their
18 respective counsel, that the deposition
19 of ARTHUR BAYLOR may be taken before
20 Leslie K. Hartsfield, at 8650 Minnie
21 Brown Road, Montgomery, Alabama,

22 DEPOSITION OF ARTHUR BAYLOR

23 taken on the 19th day of March, 2008

DEFENDANT'S
EXHIBIT

8

367 VALLEY AVENUE
(205) 327-2207 BIRMINGHAM ALABAMA

FREEDOM COURT REPORTING

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1 say, no, I didn't testify to that.

2 Q. Right.

3 A. What I was looking at the
4 public safety.

5 Q. Right. Public safety
6 whether she was potential risk --
7 whether she was potentially dangerous;
8 right?

9 A. Public safety concerns of --
10 for the citizens, for the officers, and
11 then for the officer herself.

12 Q. So again, as I looked at the
13 paperwork, and I understand you didn't
14 testify, but you had some concerns that
15 there might be a risk of injury or
16 safety to the citizens or the other
17 police officers if she came back after
18 she attempted to commit suicide?

19 A. Yes.

20 Q. Kind of a nutshell; right?

21 A. Yes, ma'am.

22 Q. And ultimately as I read the
23 paper, it was determined that since the

FREEDOM COURT REPORTING

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1 city couldn't rule out a potential risk
2 that she might be a safety risk or
3 injure citizens or other police
4 officers, the decision was made not to
5 bring her back?

6 A. Not -- I think she was
7 there. She was dismissed.

8 Q. Right. She was not allowed
9 to come back as a patrol officer. The
10 decision was made that she should be
11 dismissed because the city felt that it
12 couldn't rule out the possibility of a
13 risk that she might either injure
14 citizens or injure other police
15 officers?

16 A. I think what we dismissed
17 her on was the two charges that were
18 brought against her due to remain fit,
19 rules and regulations of policies and
20 procedures and duties of responsible
21 employment, that's why she was
22 terminated.

23 Q. I understand that. But in

FREEDOM COURT REPORTING

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1 looking at the testimony and especially
2 Mr. Carnell's testimony, what -- what it
3 looks like is that the reason that
4 she -- ultimately the reason she was
5 found -- I mean, kind of bottom line the
6 rule, the reason that she was terminated
7 was because there was -- there continued
8 to be that safety risk or harm?

11 A. Again, I can answer it the
12 best way I know how to. Due to the
13 public safety concern for the citizens,
14 for the officers, for fellow officers
15 and then for the officer herself. And
16 she was charged with under the rules and
17 regulations that we all supposedly
18 follow or have to follow and she
19 violated that.

Q. Did the city have any evidence that she was not capable of returning to her job, that she actually, in fact, wasn't capable of returning to

FREEDOM COURT REPORTING

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1 A. Where are you? I'm not
2 sure.

3 Q. I'm sorry. Page 10.

4 A. Where?

5 Q. About -- almost half of the
6 way down. Right here (indicated).

7 A. This one?

8 Q. No. Right there
(indicated).

10 A. Okay. What about it?

11 Q. Well, I'm asking -- you've
12 read that; correct?

13 A. Yes, ma'am, just read it.

14 Q. And my understanding is you
15 two had such -- had a similar concern;
16 is that right?

17 A. About the public safety,
18 yes.

19 Q. What did you think she might
20 do?

21 MR. BOYLE: Object to the
22 form.

23 A. What?

FREEDOM COURT REPORTING

200

1 Q. What did you think she might
2 do that --

3 A. She already tried to kill
4 herself. And if she tried that again
5 and she had a partner or a citizen out
6 there and didn't respond, that would be
7 a problem, a public safety issue.

8 Q. So you're saying that if she
9 killed herself while on duty, then she
10 couldn't respond?

11 A. Right. And leaves her
12 partner also or her back-up or if she
13 was a back-up, it creates a public
14 service -- a public safety concern.

15 Q. What were some other -- what
16 were some other safety concerns?

17 A. Like I said earlier, for
18 the -- other citizens, other officers,
19 and for herself also.

20 Q. Right. I'm just trying to
21 figure out what -- other than attempting
22 to kill herself while on duty, any other
23 concerns that you thought?

FREEDOM COURT REPORTING

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1 A. Just what I just said, that
2 she wouldn't -- if she didn't do her
3 job, like she tried to kill herself,
4 that would put other people in harm's
5 way.

6 Q. Now, Mr. Carnell essentially
7 testifies that he didn't think that Ms.
8 or that Deputy Stokes was really capable
9 of coming back and performing her job
10 duties and sounds like you essentially
11 don't disagree with that, am I right?

12 A. As far as I'm concerned?

13 Q. Yes.

14 A. I don't know what John
15 Carnell thinks, but what I think is no.
16 From the act that she committed, there
17 is a problem with that act, yes,
18 ma'am.

19 Q. And that would interfere --
20 that would really mean she couldn't
21 satisfactorily perform her job duties?

22 A. I see a problem with the act
23 that she committed, yes, ma'am.

FREEDOM COURT REPORTING

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1 Q. Right. But the act she
2 committed and the safety concerns
3 associated with it, meant that you
4 basically thought there was enough of a
5 concern that she couldn't perform her
6 job duties?

7 A. She committed an act that in
8 my opinion created a public safety
9 concern and so that's why I recommended
10 dismissal.

11 Q. And her -- but I'm assuming
12 if you thought that she could
13 successfully complete her job duties,
14 you wouldn't have recommended dismissal?
15 If you thought she could have come back
16 and safely performed her job duties, you
17 wouldn't have recommended that she be
18 dismissed, I'm assuming?

19 MR. BOYLE: Object to the
20 form.

21 Q. Am I right?

22 A. We go by the rules and
23 regulations of the police department and

FREEDOM COURT REPORTING

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1 Police Department's rules and
2 regulations and I felt she should be
3 dismissed.

4 Q. Well, did you think she
5 could safely perform her job or not?

6 A. I'm -- I think what she did
7 created a problem and violated the rules
8 of the police department, period.
9 That -- I mean, that's it. That's what
10 she did. Once you violate the rules of
11 the police department, we go by that.
12 We go by your violation of the rules of
13 the police department.

14 Q. But my question to you is
15 and I'm entitled to an answer on this.
16 Please bumblebee it. Do you think that
17 she could have safely performed her job
18 when you recommended her termination or
19 not?

20 A. Okay. For the fourth time,
21 my answer is --

22 Q. I need a yes or no. Do you
23 think she could have safely performed

FREEDOM COURT REPORTING

1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

2

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5 CIVIL ACTION NO.: 2:07-cv-686

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CANDIDA STOKES,

Plaintiff,

vs.

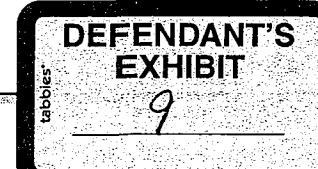
THE CITY OF MONTGOMERY, et al.,

Defendants.

STIPULATION

IT IS STIPULATED AND AGREED by and between the parties through their respective counsel, that the deposition of Mayor Bobby Bright may be taken before Angela Smith McGalliard, RPR, CRR, at the offices of Mayor Bright, at 103 N. Perry Street, Montgomery, Alabama 36104, on the 30th day of June, 2008.

DEPOSITION OF MAYOR BOBBY BRIGHT



367 VALLEY AVENUE
(205) 397-2397 BIRMINGHAM, ALABAMA 1-877-373-3660

FREEDOM COURT REPORTING

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1 with found that out and started -- and
2 started using that against her in some form
3 or fashion? That could create tremendous
4 liability for her, but also for the City of
5 Montgomery.

6 Q. Okay. You said you don't know
7 if she could be the type of police officer
8 that would be -- and I'm recharacterizing
9 you but I don't mean to, so correct me if
10 I'm wrong.

11 A. Okay.

12 Q. You didn't know if she could
13 be the type of police officer that would be
14 appropriate for the Montgomery Police; is
15 that essentially what you're saying?

16 MR. BOYLE: Object to the
17 form.

18 A. Not with the fact that she
19 acted out her depression. That's the bottom
20 line here, I think, more than anything. I
21 think bottom line is, had she not taken
22 that, I think, the extreme step, the
23 ultimate step of self-destruction, we would

FREEDOM COURT REPORTING

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1 it, and her go out on the job, and create
2 liability for herself, and even get hurt or
3 killed herself by someone, you know, that we
4 -- and we would not even know that she's
5 having a problem with failing to take her
6 medication properly. There are -- And she
7 could go out and be taking her medication
8 and not -- and not be responding to it
9 properly and shoot somebody or hurt somebody
10 and expose the City to liability and
11 herself, again. And, yet, you know, you
12 don't ever know. You're asking me my
13 conjecture on some -- on what could happen.
14 It could be a variety of different things
15 that could happen.

16 Q. Well, do you know whether she
17 was on medication?

18 A. I have no idea.

19 Q. Okay. So maybe she wasn't on
20 medication to take?

21 A. I don't know.

22 Q. Is that right?

23 A. I have no idea.

FREEDOM COURT REPORTING

1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

(C)(D)V

5 CIVIL ACTION NO.: 2:07-cv-686

6 CANDIDA STOKES,

7 Plaintiff,

8 vs.

9 THE CITY OF MONTGOMERY, et al.,

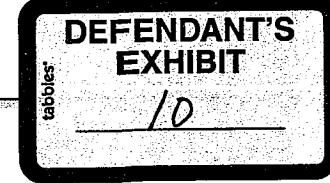
10 Defendants.

11
12 S T I P U L A T I O N

13 IT IS STIPULATED AND AGREED by and
14 between the parties through their respective
15 counsel, that the deposition of John Carnell
16 may be taken before Angela Smith McGalliard,
17 RPR, CRR, at the offices of Davis &
18 Herrington, at 8650 Minnie Brown Road, Ste:
19 150, Montgomery, Alabama 36117, on the 30th
20 day of June, 2008.

21
22 DEPOSITION OF JOHN CARNELL

23



FREEDOM COURT REPORTING

20

1 Q. And what did you hear?

2 A. I heard she was going to be
3 terminated, dismissed.

4 Q. Okay. What was your
5 understanding as to why she was terminated?

6 A. Because of the incident of
7 committing suicide -- or attempting to
8 commit suicide, excuse me.

9 Q. Okay. Now, you testified at
10 the investigation involving Deputy Stokes,
11 did you not?

12 A. Yeah. The trial board down
13 there at the police department.

14 Q. Yeah. You testified --

15 A. I remember that.

16 Q. And do you remember testifying
17 that you thought that Deputy Stokes was --
18 could possibly pose a risk?

19 A. I was -- I think I testified
20 that I was concerned that she could possibly
21 pose a risk, based on the job that she had
22 to do out on the streets.

23 Q. And what would you base that

FREEDOM COURT REPORTING

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1 A. Uh-huh.

2 Q. I'm sorry, you need to say
3 yes.

4 A. Yes. Yes.

5 Q. Now, am I understanding your
6 testimony now that -- Well, strike that.

7 Do you know whether anybody
8 else -- Well, did anybody else at -- at the
9 City talk with you about any concerns that
10 they may have had regarding liability?

11 MR. BOYLE: Object to the
12 form.

13 A. Not to my knowledge.

14 Q. Okay. What were your concerns
15 about liability?

16 A. As a risk manager, I was
17 concerned about liability if something
18 happened out on the streets that was
19 involving Candida Stokes, that it would
20 present a liability to the City because of
21 the history she had.

22 Q. Okay. Why would -- Strike
23 that.

FREEDOM COURT REPORTING

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1 But you didn't have any
2 evidence that she was a risk or a liability
3 concern?

4 A. No, ma'am.

5 Q. No medical evidence?

6 A. No, ma'am.

7 Q. Are you aware that under the
8 federal law, decisions regarding a person's
9 ability to work have to be made on objective
10 medical evidence?

11 MR. BOYLE: Object to the
12 form.

13 A. No, I'm not.

14 Q. Okay. And then -- Okay. You
15 indicate down here, halfway down the page,
16 that if you didn't have concerns about
17 liability, you would not have forwarded her
18 for a fitness-for-duty evaluation.

19 A. Uh-huh.

20 Q. I'm sorry?

21 A. Yes. Yes. I'm sorry.

22 Q. Again, I guess what I have to
23 ask you, is why bother to forward her for a